UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1389
23 March 2000

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1389th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1389/Add.1.

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GE.00-41074 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth periodic report of Lesotho (CERD/C/337/Add.1; HRI/CORE/1/Add.98)

1. At the invitation of the Chairman, Mr. Maema, Ms. Lebotsa, Ms. Lesoli and Ms. Kotela (Lesotho) took places at the Co nittee table.

2. Mr. MAEMA (Lesotho), introducing Lesotho's fourteenth periodic report (CERD/C/337/Add.1), thanked the Committee for its consideration in allowing his Government to postpone the presentation of its report, thus allowing time for an inter-ministerial committee to prepare it thoroughly. Past experience had shown that United Nations technical assistance went a long way in equipping officials in Lesotho with the requisite reporting skills.

3. Lesotho had an estimated population of 2 million, which coexisted with a small minority of foreign immigrants composed of Europeans, Asians, Americans and Africans from South Africa, Botswana, Namibia, Zimbabwe, Mozambique, Tanzania, Malawi and Uganda. The two official languages were English and Sesotho. The foreign immigrant population enjoyed the right to speak their respective languages of origin without any restrictions.

4. The Constitution of Lesotho prohibited racial discrimination. Section 18 (4) and (5) thereof did contain exceptions, but those did not constitute discrimination per se. For example, they concerned persons who were not citizens of Lesotho or were related to the application of the law in respect of marriage, divorce, adoption, burial, inheritance and similar matters. But nothing in section 18 (4) and (5) could prevent laws from being passed to promote a society based on equality and justice for all citizens, or the removal of other discriminatory legislation.

5. Turning to legislation and practice, he said that the 1971 Race Relations Order, which prohibited racial discrimination in public places, had been an expression of his Government's strong objection to South Africa's apartheid policy at the time. Unfortunately, the Order had confined itself to discrimination in places open to the public. Moreover, it did not make provision for aggrieved individuals to institute proceedings directly in court without making a prior presentation to the Minister, nor did it impose penalties for violations of its provisions.

6. Clearly, the Order had not been amended in accordance with the Committee's General Recommendation I of 24 February 1972, or in the aftermath of the unfortunate rioting in Lesotho in 1991 and 1998 directed against foreign immigrants, which had resulted in loss of life and mass destruction of property in districts with a large foreign immigrant presence.

7. Following the 1998 events, the Minister for Foreign Affairs had stated that the Government could not condone group violence perpetrated against foreign immigrants or the dispossession of their property, and he had reassured the foreign population that the Government was committed to providing for the security of all nationalities living in Lesotho.

On 16 March 2000, the Minister had warned certain opposition leaders to stop threatening foreign businessmen with the destruction of their businesses, and the police had been put on alert to ensure their protection.

8. Concerning the strike in Butha Buthe, in the northern district, in which the police had intervened and a number of workers had been killed, a commission of inquiry had examined several complaints of discrimination at the workplace and in the areas of salaries, medical treatment and social services.

9. On a positive note, he said that intermarriage between Basothos and other nationalities was socially accepted. In that connection, the 1952 adoption proclamation, which prohibited Basotho nationals from adopting children while granting whites that same right, was to be reviewed by the Law Reform Commission.

10. With regard to the hiring of foreigners, he said that foreign immigrants were employed in professions where national expertise was lacking, such as in the fields of medicine and engineering. That showed his Government's favourable attitude towards hiring foreign immigrants.

11. He had brought a revised version of the report, which superseded the one submitted in 1999. He wished to make it available to the Committee.

12. Ms. McDOUGALL (Country Rapporteur), welcoming the delegation of Lesotho, noted that the fourteenth periodic report combined the eight reports due since the submission of its fifth and sixth reports in 1982.

13. Beginning with a general point, she noted that, linguistically, the population of Lesotho was almost entirely Sesotho-speaking, with small European, Asian and Xhosa-speaking minorities. According to statistics, 99.7 per cent of the population was Sotho, with 1,600 European and 800 Asians. It was unclear what proportion of the European and Asian population had Lesotho nationality, because the report contained no such data. More specific information was needed on the small minority of Indian, Xhosa and Phuthi (para. 28) and the small minority of Basotho of Indian origin (para. 16). In future reports, it would be useful for the State party to include more specific demographic information.

14. She noted that there was a growing number of manufacturing operations owned by Asian nationals, and that some of those businesses had had to deal with disputes about working conditions that had given rise to racial tension. According to her information, in one particular incident in February 1998 the factory management of a Taiwanese-owned garment factory had been taken hostage by employees during a strike about wages and working conditions. The police had intervened and, in clashes with strikers, one person had been killed and several seriously injured. In the months following the incident, as many as 100 Asian nationals fearing ethnic prejudice had fled Lesotho. According to credible sources, tensions between Lesotho nationals and Asian and white South African factory owners remained high. Could the delegation provide further information on the situation of Asian nationals in Lesotho?

15. Concerning implementation of article 2 of the Convention, the fourteenth periodic report of Lesotho outlined various measures prohibiting racial discrimination against persons or groups and ensuring that the authorities complied with the provisions of the Convention. However, it was not always clear whether the policies referred to in the report were mandated by legislation.

16. The report stated that one goal of the Ministry of Education was to incorporate cultural values in school activities (para. 8 (d)). It would be useful to know whether such cultural values were confined to those of traditional Sesotho-speaking culture or whether Asian and European cultures were also given attention in the educational system. The State party reported that there had been difficulties in some areas as certain classes of people had established schools and there had been some discrimination, in particular with regard to an Islamic school which had been forced to close (para. 21). The Committee would appreciate it if the delegation of Lesotho could provide further information on the subject.

17. The report highlighted section 18 of the Constitution, which protected all persons from racial discrimination (para. 11). Two parts of section 18 required further elaboration. Section 18 (1) stated that subject to the provisions of subsections (4) and (5), no law could make any provision which was discriminatory either of itself or in its effect, but the report did not contain the actual wording of subsections (4) and (5). Similarly, section 18 (2) stated that subject to the provisions of subsection (6), no person could be treated in a discriminatory manner by any written law or in the performance of the functions of any public office or any public authority. Could the full text of section 18 be made available?

18. Likewise, the report did not contain any specific measures taken to give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons. Moreover, it stated that there had been no measures to review governmental, national and local policies or to amend, rescind or nullify any laws or regulations which had the effect of creating or perpetrating racial discrimination (para. 16) and that there was no single organization which dealt with the integration of the various racial groups or the elimination of barriers between races (para. 17). In light of recent tensions concerning Islamic schools and between Asian factory owners and Basotho workers, she asked the delegation of Lesotho to elaborate on those points. Was any mechanism in place to review legislation and promote racial equality?

19. Turning to implementation of article 4 of the Convention, she said that the fourteenth periodic report cited the 1971 Race Relations Order as a measure designed to eradicate all incitement to, or acts of, racial discrimination by stipulating that anyone who deliberately aided, induced or incited any person to discriminate on racial grounds was guilty of an offence (para. 34), but it did not provide the actual text of the section, nor did it mention any provision specifically making it a crime to participate in organizations which promoted and incited racial discrimination. Whereas "deliberate" acts might be covered by the 1971 Order, it was unclear whether participation in a racist organization alone would be regarded as an offence under Lesotho law.

20. Could the delegation of Lesotho explain whether it had considered implementing legislation to fulfil its obligations under article 4 (a) and (b)? Although the report contained general descriptions of measures relating to article 4 (a), it did not address the Committee's General Recommendation XV on making the financing of racist activities a crime.

21. She asked the State party whether it had implemented any specific penal legislation pursuant to article 4 (a) and (b) of the Convention.

22. On the implementation of article 5 of the Convention, it was unclear whether equal treatment before the courts extended to members of minority groups, such as citizens of Indian origin. Was customary law also applied to foreigners? How was it determined whether customary or general law applied? How had the problem of inheritance law been resolved?

23. Could the delegation of Lesotho explain whether the right to nationality applied to all persons as provided by article 5 (d) (iii) of the Convention?

24. With regard to implementation of article 6 of the Convention, the report stated that there was a constitutional provision, a statute and an ombudsman specifically addressing complaints of racial discrimination, but that not a single complaint had been made at the time of the report's submission (paras. 70-72). Had any such complaints been lodged in the two years since the report had been filed? If so, what types of discriminatory acts had been the subject of the complaints, and how had the cases been decided? What steps had Lesotho taken to educate citizens about their rights under the Convention and the availability of redress mechanisms?

25. As for implementation of article 7 of the Convention, the State party reported that there was no information being disseminated to promote better understanding, tolerance and friendship within the racial and ethnic groups in the country (para. 73). Was that still the case? Had any programmes been set up to ensure compliance with Lesotho's obligations under article 7?

26. The report asserted that there was no racial discrimination in Lesotho and that no such complaints had been lodged. Even if that were true, it would not release the State party from its obligation under the Convention to put into place effective legislation, policies and programmes to combat racial discrimination.

27. She looked forward to pursuing the dialogue with Lesotho.

28. Mr. VALENCIA RODRIGUEZ said that although the Committee had not been provided with detailed demographic information, it was aware of the existence of Indian, Xhosa and Phuthi minorities in Lesotho; the implementation of the Convention was therefore important in spite of the State party's assertion that racial discrimination was unknown in the country.

29. What was the situation of the Convention vis-à-vis domestic legislation in Lesotho? Were special implementing provisions required for its application? Could it be invoked in the domestic courts? Which of the two parallel legal systems was applied with respect to the instrument?

30. Aside from the Race Relations Order of 1971, was there any legislation which put into effect the constitutional provision that prohibited racial discrimination and proclaimed equality before the law?

31. He would welcome further clarifications regarding article 18.7 of the Constitution, which prohibited discrimination with regard to access to public services and facilities - an aspect to

which the Committee attached great importance. More information was also required on the scope of article 5 of the Race Relations Order to ascertain whether it was in compliance with article 4 (a) and (b) of the Convention. Also, did the Criminal Code contain provisions in relation to article 5 of the Race Relations Order?

32. He noted with satisfaction that the Labour Code prohibited any discriminatory practice on racial or ethnic grounds and that Lesotho had acceded to most of the important International Labour Organization Conventions. However, he would like some information on the situation of minority groups with respect to labour issues.

33. Paragraph 50 of the report referred to problems that arose in connection with inheritance matters owing to the country's dual legal system. The Government might wish to look into the possibility of harmonizing its legal system, which would help to resolve such problems as well as to ensure the enjoyment of other rights under article 5 of the Convention.

34. He commended the Lesotho Government on the special attention it was paying to health and education matters but would welcome further information on the subject. What was meant by the statement in paragraph 9 to the effect that schools were multiracial from primary school to university level? What percentage of children belonging to minority groups attended school? How were the principles of racial tolerance and friendship taught?

35. More information was needed on the application of article 6 of the Convention; in particular he would like to see the text of article 22.1 of the Constitution. From the information contained in paragraphs 70 to 72 of the report, it seemed that persons alleging to be victims of discrimination could apply to the High Court to seek redress and compensation.

36. Could the delegation shed further light on the Islamic English Medium School v. Abdul Razak Osman and others case, referred to in paragraph 21 of the report, since it seemed that issues other than racial discrimination were involved.

37. The report provided scant information on Lesotho's compliance with its obligations under article 7 of the Convention. Such information was essential given the existence of ethnic minorities in the country, notwithstanding the State party's assertion that racial discrimination was unknown. In conclusion, he recommended that the State party's report and the Committee's concluding observations thereon should be adequately disseminated.

38. Mr. de GOUTTES, after welcoming the opportunity for renewed dialogue with the Government of Lesotho, stressed that the Committee would not be satisfied with the assertion that no racial discrimination existed in the country. No State party was completely free of the problem, whence the need for appropriate legislation, not least as a preventive measure. Referring to paragraph 4 of the report, which outlined Lesotho's very complex dual legal system, he asked what the criteria were for applying customary or common law and whether such criteria were sufficiently clear. As for legislation relating to racial discrimination, mention had been made in the report of the Race Relations Order of 1971; however, could sanctions be applied in cases of racial discrimination under customary law?

39. According to paragraph 11 of the report, the Constitution protected all persons against racial discrimination, subject to the provisions of subsections 4, 5 and 6 thereof. Could the delegation shed some light on the contents of those subsections? He would also welcome some clarification regarding the instances of racial problems in some schools, referred to in paragraph 21 of the report. Which sectors of the population were generally the target of such discrimination?

40. Mr. FALL, referring to the information provided in paragraphs 47 and 50 of the report relating to the Marriage Act and inheritance matters respectively, sought clarification regarding inheritance matters in Lesotho, particularly since they often caused problems in African countries.

41. Mr. DIACONU said that when considering the report it was important to remember that Lesotho, landlocked by South Africa, was a very small country, which had suffered greatly from apartheid, even though it had not espoused that policy. Given its experience in such matters, Lesotho was well aware of racial discrimination problems and well prepared to combat them. Was there a land reform programme in Lesotho and, in the affirmative, had any particular problems been encountered such as unequal land distribution on racial grounds?

42. According to the last sentence of the report, no information was being disseminated in order to promote better understanding and tolerance between different racial and ethnic groups. However that was an essential task for all countries, great and small, irrespective of the existence of race-related problems.

43. Mr. NOBEL said that he had found it particularly difficult to prepare for the dialogue with the State party, since the information provided in the report was not up to date, especially with regard to relevant political developments. His remark was not intended in any way to be a criticism; he underlined the Committee's great interest in and sympathy for Lesotho's efforts with respect to racial discrimination, as well as its satisfaction that the dialogue with the Government had finally resumed.

44. The CHAIRMAN, speaking on behalf of the Committee as a whole, endorsed Mr. Nobel's comments. In particular, he welcomed the fact that the Lesotho Government had sent such a high-level delegation for the consideration of its fourteenth periodic report. He trusted that it would continue to report on a regular basis to the Committee, in accordance with its obligations under article 9 of the Convention.

45. The Lesotho delegation withdrew.

The public part of the meeting rose at 4.25 p.m.